

**James Madison to James Robertson, Jr., March 27, 1831. Transcription: The Writings of James Madison, ed. Gaillard Hunt. New York: G.P. Putnam's Sons, 1900-1910.**

**TO JAMES ROBERTSON. MAD. MSS.**

Mar. 27, 1831.

Dear Sir, —I have recd. your letter of the 8th. but it was not until the 23d. inst.

The veil which was originally over the draft of the resolutions offered in 1798 to the Virga. Assembly having been long since removed, I may say, in answer to your enquiries, that it was penned by me; and that as it went from me, the 3d. Resolution contained the word “alone,” which was stricken out by the House of Delegates.<sup>1</sup> Why the alteration was made, I have no particular knowledge, not being a member at the time. I always viewed it as an error. The term was meant to confine the meaning of “ *parties* to the constitutional compact,” to the States in the capacity in which they formed the compact, in exclusion of the State Govts. which did not form it. And the use of the term “States” throughout in the *plural* number distinguished between the fights belonging to them in their collective, from those belonging to them in their individual capacities.

<sup>1</sup> “That this Assembly doth explicitly and peremptorily declare that it views the powers of the Federal Government as resulting from the compact to which the states [alone] are parties,” &c. *Ante*, Vol. VI., p. 326.

With respect to the terms following the term “unconstitutional”—viz. “not law, but null void and of no force or effect” which were stricken out of the 7th. Resoln. my memory cannot

## Library of Congress

positively decide whether they were or were not in the original draft, and no copy of it appears to have been retained.<sup>2</sup>

<sup>2</sup> *Ibid.*, p. 331.

On the presumption that they were in the draft as it went from me, I am confident that they must have been regarded only as giving accumulated emphasis to the *declaration*, that the alien & sedition acts had in the opinion of the Assembly violated the Constitution of the U. S. and not that the addition of them could annul the acts or sanction a resistance of them. The Resolution was expressly *declaratory*, and proceeding from the Legislature only which was not even a party to the Constitution, could be declaratory of opinion only.

It may not be out of place here to remark that if the insertion of those terms in the draft could have the effect of showing an inconsistency in its author; the striking them out wd. be a protest agst. the doctrine which has claimed the authority of Virginia in its support.

If the 3d. Resolution be in any degree open to misconstruction on this point, the language and scope of the 7th ought to controul it; and if a more explicit guard against misconstruction was not provided, it is explained in this as in other cases of omission, by the entire absence of apprehension that it could be necessary. Who could, at that day, have foreseen some of the comments on the Constitution advanced at the present?

The task you have in hand is an interesting one, the more so as there is certainly room for a more precise & regular history of the Articles of Confederation & of the Constitution of the U. S. than has yet appeared. I am not acquainted with Pitkin's work, and it was not within the scope of Marshall's Life of Washington to introduce more of Constitutional History than was involved in his main subject. The Journals of the State Legislatures, with the Journal & debates of the State Conventions, and the Journal and other printed accounts of the proceedings of the federal Convention of 1787, are of course the primary sources of information. Some sketches of what passed in that Convention have found their way to the public, particularly those of Judge Yates and of Mr. Luther Martin. But the

## Library of Congress

Judge tho' a highly respectable man, was a zealous partizan, and has committed gross errors in his desultory notes. He left the Convention also before it had reached the stages of its deliberations in which the character of the body and the views of individuals were sufficiently developed. Mr. Martin who was also present but a part of the time betrays, in his communication to the Legislature of Maryland, feelings which had a discolouring effect on his statements. As it has become known that I was at much pains to preserve an account of what passed in the Convention, I ought perhaps to observe, that I have thought it becoming in several views that a publication of it should be at least of a posthumous date.

I know not that I could refer you to any other appropriate sources of information wch. will not have occurred to you, or not fall within your obvious researches. The period which your plan embraces abounds with materials in pamphlets & in newspaper essays not published in that form. You would doubtless find it worth while to turn your attention to the Collections of the Historical Societies now in print in some of the States. The library of Phila. is probably rich in pertinent materials. Its catalogue alone might point to such as are otherwise attainable. Although I might with little risk leave it to your own inference, I take the liberty of noting that this hasty compliance with your request is not for the public eye; adding only my sincere wishes for the success of the undertaking which led to it, and the offer of my friendly respects & salutations.